

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 366 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

RAMSINH KUBERSINH RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 366 of 2003
MR KB ANANDJIWALA for Petitioner No. 1
MR IM PANDYA, APP for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 25/02/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Anandjiwala for the petitioner accused and ld. APP Mr. Pandya for the

State.

2. By this Revision Application, the petitioner has challenged the legality and validity of the order passed by Id. Addl. Sessions Judge, Fast Track Court, Sabarkantha at Himmatnagar on 14.07.2003 below application exh.6 preferred by the petitioner accused under Sec.227 of the CrPC praying discharge on the grounds mentioned in the application. The application exh.6 is self-explanatory wherein the petitioner accused has referred the relevant Rules i.e. Explosives Rules,1983 (hereinafter referred to as the Rules) and has contended that Rules 126, 129 & 133 of the said Rules are relevant for the purpose of the present Revision. The petitioner has been chargesheeted by the Investigating Agency for commission offences punishable under Sec.4 & 5 of the Explosives Substances Act,1981 (hereinafter referred to as the Act). I would like to quote relevant sections 4 & 5 of the said Act for the sake of brevity and convenience :-

4. Punishment for attempt to cause explosion, or for making or keeping Explosives with intent to endanger life or property-

Any person who unlawfully and maliciously-

(a) does any act with intent to cause
by an Explosives substance, or
conspires to cause by an
Explosives substance, an
explosion in India of a nature
likely to endanger life or to
cause serious injury to property;
or

(b) makes or has in his possession or
under his control any Explosives
substance with intent by means
thereof to endanger life, or
cause serious injury to property
in India, or to enable any other
person, by means thereof to
endanger life or cause serious
injury to property in India,

shall, whether any explosion does or does
not take place and whether any injury to
person or property has been actually
caused or not, be punished with

transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added."

5. Punishment for making or possessing Explosivess under suspicious circumstances-

Any person who makes or knowingly as in his possession or under his control any Explosives substance, under such circumstances that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added."

3. It is argued that no offence punishable under Sec.4 of the said Act is made out even as per the papers of investigation filed with the chargesheet and the language of the letter addressed to the District Magistrate, Sabarkantha at Himmatnagar dated 25.10.2002 by Jt. Chief Controller of Explosivess, West Circle, Mumbai.

4. The case of the prosecution is that the stock of Explosivess was to reach the destination- place of storage notified in the licence granted to the present petitioner at any time on 20.10.2001. The stock was dispatched by the authorised agency on 18.10.2001 and in the early hours of 20.10.2001 i.e. at about 0.30 hours immediately after the midnight of 19.10.2001, raid was carried out by PSI Mr. H.K.Rana of ADS Branch, Khedbrahma, Dist: Sabarkantha. It is the say of the petitioner that he is a licence holder and his son Digvijaysinh Rathod at relevant point of time was looking after the receipt of the stock and storage thereof. At the time when raid was carried out, goods viz. stock of Explosives of Class:III worth Rs.27,500/ unloaded by the transporter were lying just nearby godown on open land unloaded for the purpose of storage thereof in the godown.It is true that keeping such stock of Explosives

on open land may be dangerous, but the material received at the place of godown and found unloaded nearby godown in the night hours if is not fully unloaded in godown itself or the same is in the process of shifting from the place where it is unloaded to the godown, by that itself would not constitute an offence under Sec.4 of the Act. It is on record that Rule 126 of Rules was pointed out to the Investigating Officer in more than one manner and it is important to note that the entire issue was brought to the notice of Jt. Chief Controller of Explosives, West Circle, Mumbai who had written a letter dated 25.10.2002 addressed to the District Magistrate, Sabarkantha at Himmatnagar. I would like to reproduce the relevant portion of the said letter:-

" I am forwarding herewith a copy of the appeal received from the licensee Shri Ramsingh Kubersingh Rathod, in response to this office endorsement under reference for your kind perusal and review. You may kindly observe from the appeal that the licensee is quite old to carry on all his normal obligation as licensee under the Rules. Therefore, he has proposed to include his son's name namely Shri Digvijaysinh Rathod in the licence. The fact that the licensee's 3 sons are quarreling with each other does not constitute justifiable grounds for refusal of NOC. The licensee has the constitutional right to exercise his option as to which of his sons should be inducted as a partner. You have also mentioned in your letter that an offence has been registered against the licensee in Khedbrahma P.S., St.I Gr. No.68/01 for keeping Explosivess beyond the licensed limits. This is not a serious offence and the storage of Explosivess in excess of the licensed quantity is permitted under Rule 126 of the Explosivess Rules,1983."

5. It is rightly submitted by ld. counsel Mr. Anandjiwala that though this letter says that "this is not a serious offence", by itself would not be sufficient to frame charges under Sec.4 & 5 of the Act because there should be prima facie convincing evidence on record to show that the accused has done alleged act unlawfully and maliciously. These two material and important elements are missing in this case. It was open for the petitioner accused to obtain appropriate orders from the competent authority within reasonable period of time and this could have been done in couple of hours and days. It seems that because of some interse dispute amongst the brothers of Digvijaysinh and sons of the present petitioner,

somebody must have informed the police agency so that immediately after arrival of the stock of Explosivess from authorised agency, raid could be carried out. Considering the scheme of Rule 126 of the Rules referred to in the application exh.6 for discharge, the same has not been appreciated properly by the ld. Judge in reference to the language of Sections 4 & 5 of the Act. There is no material or facts brought out in the papers of investigation under which it can be said that the stock of Explosives substance was either purchased or kept at the place amounting to an offence punishable under section 4 and/or sec.5 of the Act. The ld. Judge, while dealing with the application exh.6 committed grave, serious and apparent error and, therefore, this Court shall have to intervene in exercise of the powers vested in it under Sec.397 R/w Sec.401 of CrPC.

6. In the result, present Cri. Revision Application is allowed. The impugned order dated 14.7.2003 passed by ld. Addl. Sessions Judge, Fast Track Court, below application exh.6 for discharge in Sessions Case No.28/2003 dismissing the said application, is hereby quashed and set aside. The application exh.6 for discharge is hereby allowed and the petitioner accused is hereby ordered to be discharged of the offences with which he is charged viz. for the offences punishable under Sections 4 & 5 of the Explosivess Substances Act.

7. Rule is made absolute.

[C.K. BUCH, J]

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